THE CORPORATION JOURNAL

(REGISTERED U. S. PAT. OFFICE)

VOL. XV, No. 3 DECEMBER, 1941 PAGES 49-72

COMPLETE NUMBER 286

Published by

THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporation System and associated companies deal with and act for lawyers exclusively.

The Supreme Court of the United States has held a state sales tax valid where imposed on sales made to a Government contractor operating under a "cost-plus-a-fixed-fee" contract. (See page 64.)

In New York, the Supreme Court has granted a voting trust certificate holder an order directing either the furnishing to him of a list of the voting trust certificate holders or the calling of a meeting of such holders to determine if such a list should be furnished. (See page 54.)

In Ohio, a statute prescribing a penalty for declaring a nominal dividend was ruled unconstitutional recently. (See page 55.)

In Texas, the phrase "business done in Texas," as used in the numerator in the allocation factor for Texas franchise tax purposes, was held to mean business begun and completed in Texas. (See page 66.)

President.

THE CORPORATION JOURNAL

VOL. XV, No. 3 DECEMBER, 1941 PAGES 49-72

The Corporation Journal is published by The Corporation Trust Company, monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for December

CORPORATION TRUST

The Corporation Trust Company
C T Corporation System
And Associated Companies

Albany	158 State Street	Jersey City	15 Exchange Place
Atlanta	57 Forsyth Street, N. W.	Kansas City	926 Grand Avenue
Baltimore	10 Light Street	Los Angeles	510 S. Spring Street
Boston	10 Post Office Square	Minneapolis	409 Second Avenue S.
Buffalo	295 Main Street	New York	120 Broadway
Chicago	208 South La Salle Street	Philadelphia	123 S. Broad Street
Cincinnati	441 Vine Street	Pittsburgh	535 Smithfield Street
Cleveland	925 Euclid Avenue	Portland, Me.	57 Exchange Street
Dallas	1309 Main Street	San Francisco	220 Montgomery Street
Detroit	719 Griswold Street	Seattle	821 Second Avenue
Dover, Del.	30 Dover Green	St. Louis	314 North Broadway
Hartford	50 State Street	Washington	1329 E St. N.W.

Wilmington . . . . 100 West 10th Street

Having offices or representatives in every state and territory of the United States and in the District of Columbia and in every province of Canada, we:

1—obtain for lawyers, from official sources, any official information the lawyer needs for incorporating or qualifying a client in any jurisdiction:

2—under the lawyer's direction, attend to all clerical details of incorporation or qualification as each different jurisdiction may require—filing, recording, advertising, holding incorporators' meeting, etc.;

3—under the lawyer's direction, furnish the statutory office or agent required for either domestic or foreign corporation in any jurisdiction:

4—keep attorneys informed of all state taxes to be paid and reports to be filed by a client corporation in the state of incorporation and any states in which it may qualify as a foreign corporation.

Having completely equipped transfer departments at the New York, Jersey City and Wilmington offices we are able to serve at whichever office is preferred:

1—as Transfer or Co-Transfer Agent, or Registrar, for the securities of corporations;

2—as Custodian of Securities, Escrow Depositary or Depositary for Reorganization Committees, or Liquidating Agent for corporations being dissolved.

The associated companies' loose-leaf service division

COMMERCE CLEARING HOUSE, INC.

NEW YORK	CHICAGO	WASHINGTON
EMPIRE STATE BLDG.	214 N. MICHIGAN AVE.	MUNSEY BLDG.

—compiles and publishes a complete line of Loose Leaf Services covering new business laws and taxes, both Federal and State.

Partial List of Fields or Topics Covered

Federal Taxes • State and Local Taxes • Social Security • Liquor Control • Banking • Public Utilities • Securities • Insurance • Trade Regulation • Carriers • Aviation • Food, Drugs and Cosmetics • Bankruptcy • War Law • Chattel Mortgages • Conditional Sales • Labor • Trusts and Estates • Accountancy Law • Congressional and Legislative Reporting • U. S. Supreme Court Reporting • Canadian Taxes • Inheritance Taxes Federal Administrative Procedure

Extending Corporate Activity into New States

During December, it is the practice of many attorneys who receive instructions from corporations to obtain authority to do business in states in which the corporations have not previously been licensed, to give special consideration to the dates on which such qualifications are to be effected. This is done with an eye to possible savings of certain fees and in order to determine if it is possible to dispense with the preparation and filing of complicated state reports, related only to a few days' activity in the new states during the current year.

For instance, a corporation, operating on a calendar year basis, which enters new states during the last few days of the current year, becomes subject, in at least 30 states, to the filing of income tax returns showing income received in those states during the year, which, in effect, means income which is related to those few days. The postponing of business activities and qualification until after December 31 in any of these states would defer the preparation and filing of the corporation's first income tax returns for a year.

It may also be noted that there are 23 states in which annual corporation reports will be due shortly after January 1 if a corporation is licensed and commences activities prior to that date. It is equally true that such reports will not be due for the first time until a year later if business operations are delayed and permission to do business is secured after January 1. In a number of instances, the payment of substantial annual accompanying fees for the first time may also be postponed for a year if authority to do business and accompanying business activity are delayed until after January 1.

Then, also, in 32 states, returns of information at the source are expected early in the new year of foreign corporations which carry on activities within such states at any time before the end of the calendar year. In six of these states there are similar requirements with respect to any tax which may be withheld at the source under personal income tax laws. Here, too, the first filing of such forms may be postponed for a year if business activity within such new states is delayed until after January 1.

Hence it is not unusual for counsel, acting for companies which are planning to enter new states toward the end of a calendar year, to find, upon investigation, that considerable accounting work by his client corporations may be eliminated, and that the first payment of certain fees may be deferred for a year if it is found feasible to delay business activity and qualification until immediately after the close of the current calendar year.

Domestic Corporations

Georgia.

Execution, after dissolution, on judgment obtained by corporation prior to its dissolution, upheld. Defendant corporation had obtained a judgment against the plaintiff, who sought in this action to prevent execution against him. The judgment was dated September 3, 1935. The corporation was dissolved on November 27, 1935. The Court of Appeals of Georgia upheld an execution directed by the lower court in the name of the corporation, even though the corporation had been dissolved, ruling that the judgment "continued as a legal basis for the issuance of an execution to realize funds to satisfy the judgment for the benefit of the stockholders of the corporation," subject to the payment of the corporate debts. *Byers v. Black Motor Co., Inc.*, 16 S. E. 2d 478. Commerce Clearing House Court Decisions Requisition No. 266654. R. E. Kirby and J. P. Fowler of Cumming and E. C. Brannon of Gainesville, for plaintiff in error. Chas. J. Thurmond and Wheeler & Kenyon of Gainesville and Carl Tallent of Cumming, for defendant in error.

Maryland.

Special stockholders' meeting enjoined where notice included a purpose not stated by stockholders in making requests for the meeting. The Maryland Circuit Court, Baltimore City, has enjoined the holding of a special stockholders' meeting under circumstances where stockholders requested the meeting be held to consider and vote upon the removal of directors and the filling of the vacancies so to be created, but where the director who issued the call for the meeting added the additional purpose, not included in the requests of the stockholders, that certain provisions of the by-laws were to be repealed and amended. The court regarded the notice as invalid and the meeting as not having been properly called in accordance with the appropriate statutory provisions, Sections 18 and 19 of Article 23 of the Maryland Code. *Hoy v. International Utilities Corporation et al.*, Maryland Circuit Court, August 23, 1941. Commerce Clearing House Court Decisions Requisition No. 265645.

New York.

Voting trust certificate holder granted order directing furnishing of list of voting trust certificate holders or the calling of a meeting of such holders to determine if such a list should be furnished. Petitioner, the owner of about 5% of the voting trust certificates of respondent corporation, sought an order directing the company, its officers and voting trustees to furnish a list of the names and addresses of its voting trust certificate holders, in order that petitioner might communicate with them respecting the renewal of the voting trust agreement and whether appropriate measures should be taken for

their protection. The Supreme Court, Special Term, New York County, directed the respondents "either to furnish the list in question, or else to call a meeting of the certificate holders for the purpose of considering the question of whether the list should be furnished, and such other business as the certificate holders may desire to transact at such meeting." In the course of its opinion, the court said: "True, under the terms of the voting trust agreement, the stockholders contracted away their right to examine the list of holders of the voting trust certificates or the transfer books of the trustees, except with the prior consent of the trustees. Nevertheless, notwithstanding this provision, this Court will, in a proper case and in the exercise of discretion, direct that the information here sought be given to certificate holders." *Brentmore Estates, Inc. v. Hotel Barbizon, Inc. et al.*, 29 N. Y. S. 2d 830. Sylvester & Harris of New York City, for petitioner. Goldwater & Flynn of New York City, for respondents.

Issuance of shares to defendant stockholder upheld where corporation received full value for their issuance from another stockholder. Section 69 of the Stock Corporation Law provides, in part: "No corporation shall issue either shares of stock or bonds, except for money, labor done or property actually received for the use and lawful purposes of such corporation." In applying this language, the Supreme Court, Appellate Division, Third Department, has ruled that "the statute does not require that corporation stock must be paid for by the money, labor or property of the person to whom it is issued. It merely requires that the corporation shall receive full value for all of the stock issued." Where, therefore, the plaintiff conveyed to a newly formed corporation property whose value was far in excess of the amount of capital stock issued to plaintiff and defendant, and plaintiff had entered into an agreement to have one-half of the stock issued to defendant, the court held that the statutory requirement had been fully met, inasmuch as the corporation itself had received full value. In doing so, it reversed a judgment of the Supreme Court, Ulster County, reported at 21 N. Y. S. 2d 841, (The Corporation Journal, December, 1940, page 272), ruling that the issuance of shares to defendant was illegal because he had made no contribution of money, property or labor other than activity in promoting the company. *Winston v. Saugerties Farms, Inc.*, 29 N. Y. S. 2d 292. Paul Fromer of Tannersville (George F. Kaufman of Kingston and Lester R. Smith of Catskill, of counsel), for appellants. Charles de la Vergne and Francis Martocci of Kingston, for respondent.

Ohio.

Statute prescribing penalty for declaring a nominal dividend, ruled unconstitutional. Sec. 5392-1, Ohio General Code, provides for the imposition of a penalty upon a corporation, domestic or foreign, "equal to a tax of two mills on the dollar of the true value in money of its shares of stock owned by shareholders resident in this state," if the corporation "declares a nominal dividend for the purpose of

enabling its shareholders resident in this state to return its shares as productive investments" for property tax purposes. The Ohio Court of Common Pleas, Hamilton County, has held this section invalid for two reasons, first, that the statute failed to set forth any standard for the guidance of the Commission in determining the question of whether a dividend declared by a corporation is or is not a nominal dividend, and, second, because it failed to set up any administrative procedure complying with the requirements of due process of law to protect the rights of the corporation, either before or after the penalty is assessed. The corporation contesting the penalty had declared a 25-cent dividend. *The Pollak Steel Company v. The Tax Commission of Ohio,** Ohio Court of Common Pleas, Hamilton County, August 14, 1941. Commerce Clearing House Court Decisions Requisition No. 265487. Leonard H. Freiberg of Cincinnati, for appellant. Thomas J. Herbert, Attorney General; Percy Graham and A. A. Wendt, Asst. Attys. General, for appellee. *(Appeal filed in Ohio Court of Appeals, October 11, 1941.)*

* The full text of this opinion is printed in **The Corporation Tax Service**, Ohio, page 2738.

Pennsylvania.

Effect of word "seal" on printed form of note signed by corporation discussed by Superior Court. Referring to such a note, which did not have a seal of the corporation affixed, the court observed that "the general rule is that in the absence of a statutory requirement, the adoption of a corporate seal is not essential to corporate existence or to the transaction of corporate business." After an examination of the Pennsylvania Statute relating to a corporate seal, 15 P. S. Sec. 2852-302, the court noted that "the provision is not mandatory and the act does no more than to authorize a corporation to adopt a particular form of seal as its own." It was indicated by the court that the question as to whether the corporation intended to adopt the word "seal" as its corporate seal for the occasion was a question of fact for the jury. *Collins v. Tracy Grill & Bar Corporation*, 19 A. 2d 617. John Ryan of Philadelphia, for appellant. Roy Martin Boyd of Philadelphia, for appellee.

South Carolina.

Judgments against corporation, recovered in suits pending at time of corporation's sale of entire assets, returned unsatisfied, held responsibility of purchaser. Two stockholders obtained judgments against their company. While their suits had been pending and at a time when the company was losing money, its entire assets had been sold to the defendant, which had notice of the pending suits. The judgments being returned unsatisfied against the judgment debtor, the stockholders mentioned sought in this action to recover from the defendant and recovery was allowed by the Supreme Court of South Carolina. *Beckroge v. South Carolina Power Co.*, 15 S. E. 2d

124. Paul M. Macmillan, Shimel & Rittenberg and John I. Cosgrove of Charleston, for appellants. G. L. B. Rivers of Charleston, for respondent.

Tennessee.

Corporation, technically insolvent, held to be without authority to purchase its own stock. Appellant was one of three stockholders of defendant corporation, each of whom had contributed $1,000 of its $3,000 capital stock. Friction developing, and appellant desiring to withdraw, the corporation purchased his stock, giving him a note for $1,000, on which it paid $30. Suit was instituted for the balance. In its answer, the corporation alleged that the purchase of the stock rendered it technically insolvent and it sought a recission of the contract of purchase and asked that the note be cancelled. The Chancellor had ruled that the purchase of the stock by the corporation was illegal and void. Upon appeal, the Court of Appeals of Tennessee, Middle Section, affirmed this finding of the Chancellor, regarding the transaction as illegal because not authorized by statute, noting that the rule that a corporation cannot buy its own stock had been modified by statute in Tennessee so as to permit corporations to purchase their own stock with their surplus. *Baird v. McDaniel Printing Co., Inc. et al.*, 153 S. W. 2d 135. Claude Callicott of Nashville, for appellant. Jordan Stokes III of Nashville, for appellees.

Washington.

A Washington corporation has no authority to deal in its own stock. This principle, long the law of Washington, was held by the Supreme Court of that state to prohibit a corporation from issuing its own stock in lieu of merchandise it was under contract to deliver. *Whittaker v. Weller et al.*, 111 P. 2d 218. Carl B. Luckerath of Seattle, for appellants. H. S. Sanford of Seattle, for respondent.

Foreign Corporations

Florida.

Unlicensed foreign corporation doing business in state ruled entitled to injunction where defendant organized a domestic company with same name to prevent its qualification and prosecution of suit. In the United States District Court for the Southern District of Florida, a New York corporation had had its suit stayed because it was doing business illegally in Florida and had not qualified as a foreign corporation. When the company endeavored to qualify, in order to be in a position to continue the suit under the Florida law after being licensed, it was unable to obtain a permit by reason of the fact that, after the entry of the order staying the suit, one of the defendants had organized a Florida corporation having the same name as that of the New York company. The New York company

had been successful in the lower court in obtaining an injunction against the use of its name by the Florida company and a judgment for damages. Upon appeal the United States Circuit Court of Appeals, Fifth Circuit, affirmed the lower court, saying: "The evidence showing that defendant applied for a corporate charter, not only with full knowledge that plaintiff was doing business in the state under the same name, but for the sole purpose of interfering with and preventing plaintiff from prosecuting its suit under that name against defendant in the state court, it is perfectly clear that the injunction restraining the use by defendants of plaintiff's corporate name was properly ordered." *Scalise et al. v. National Utility Service, Inc.*, 120 F. 2d 938. Robt. R. Milam and E. T. McIlvaine of Jacksonville, for appellants. Herman Ulmer and Charles H. Murchison of Jacksonville, for appellee.

Kentucky.

Shares owned by Kentucky resident in a foreign corporation which was doing business in Kentucky, in possession of a trustee in another state, held not subject to attachment for debt in Kentucky. Petitioner had obtained a judgment in a magistrate's court in Kenton County, Kentucky, against a Kentucky resident who owned thirteen shares in an Ohio corporation doing business in Kentucky. The Ohio corporation had been made a garnishee defendant and it answered that it had no funds or property, owing the defendant, in its hands. The shares at the time of the attachment were in the possession of a trustee in Cincinnati, Ohio. The order of attachment was sustained. Subsequently the stockholder, the judgment debtor, filed his voluntary petition in bankruptcy. The judgment creditor, the petitioner, asserted his claim on the judgment and asked that his be adjudged a preferred claim on the corporate stock by reason of his attachment. The referee in bankruptcy ruled that the stock of a foreign corporation not actually within the jurisdiction of the court issuing the attachment could not be attached for debt and denied a preference. A petition for a review of this ruling was ordered dismissed by the United States District Court, E. D. Kentucky, Covington, the court finding support in Kentucky state court decisions to uphold the referee. *In re Finn*, 40 F. Supp. 607. Edward J. Elliott of Covington, for petitioner. Patrick M. Flannery of Covington, for bankrupt.

Maryland.

Corporation, with office in state in charge of agent merely promoting sales, held not doing business for purposes of being served. Service of process was made upon defendant New York corporation by serving an employe named Brodbeck who resided in Maryland and represented the company there in promoting its sales, supervising eleven others whom he employed in that work. He solicited no contracts and did not collect or forward any money to the defendant. He and the defendant had office space, free of charge, in the office

of a Maryland company which distributed magazines published by defendant, purchasing them and selling them independently to retailers and vendors in Maryland. The United States District Court, District of Maryland, granted a motion of defendant to quash the service, regarding the company as not present and doing business in Maryland under the circumstances. At the conclusion of its opinion, the court made the following interesting observation: "Whether the defendant is to be treated, under the Maryland Law, as having impliedly authorized Brodbeck to accept service, by virtue of the fact that, as he has admitted, he did so on two previous occasions when similarly employed, which was not contested, is a question we need not decide, because unless the defendant was in legal contemplation 'doing business' within the State of Maryland, it becomes immaterial." *Kriger v. MacFadden Publications, Inc.*,* 38 F. Supp. 472. Makover & Kartman and Jacob Kartman of Baltimore, for plaintiff. Weinberg & Green of Baltimore and Hays, St. John, Abramson & Schulman of New York City, for defendant.

* The full text of this opinion is printed in **The Corporation Tax Service,** Maryland, page 318.

Mississippi.

Chancery attachment action against licensed foreign corporation held properly brought in county in which a custodian of its property resided. In an attachment action in chancery against a domesticated foreign corporation, the suit was instituted in a county in which another defendant, having property of the corporation in his possession, resided. The lower court had denied a request to change the venue of the case either to another county where the right of action accrued or to a third county where the foreign corporation had a resident agent. Upon appeal, the Mississippi Supreme Court affirmed the lower court. It indicated that, in Mississippi, a domesticated foreign corporation was subject to attachment and noted that, under the statute, Section 363, suits in chancery may be brought in any county where the defendant or any necessary party-defendant may reside. The court ruled that the defendant in possession of the property was a necessary party and that his presence was "absolutely necessary to enable the complainant to proceed with her suit and to realize on any decree against it in her favor." *Gulf Refining Company et al. v. Mauney,* 3 So. 2d 844. Commerce Clearing House Court Decisions Requisition No. 266490. Armstrong, McCadden, Allen, Braden & Goodman of Memphis, Tennessee, and Thos. E. Pegram of Ripley, Miss., for appellant. Jas. A. Cunningham, Sr., and Jas. A. Cunningham, Jr., of Booneville, Miss., for appellee.

New York.

Service of process upon a licensed foreign corporation ruled ineffective where made upon a salesman and also upon the secretary of state in a cause of action arising out of the state. Plaintiffs, stockholders

don't do it until you've asked your lawyer

Going after a contract in some outside state? Should your company be qualified as a foreign corporation in that state before you make the first move on the job? Is it a state in which you should be qualified even before you submit a bid? Is it a state in which you should have your own designated agent for process *even after you have pulled out of the state?* Better ask your lawyer before you do a thing.

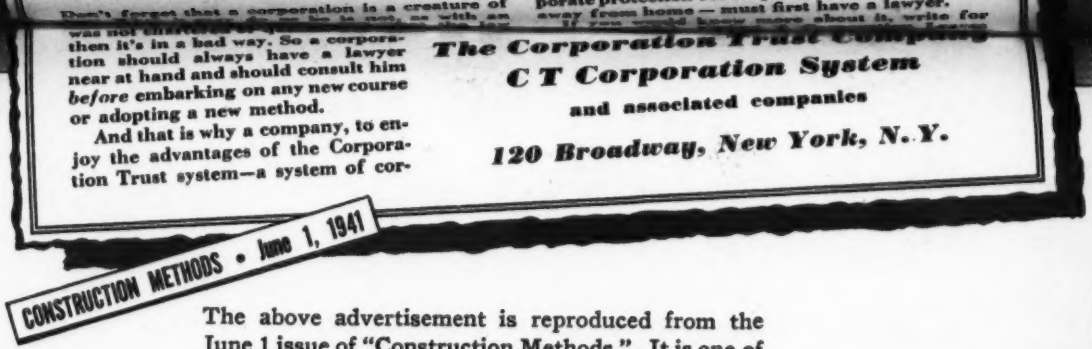
Don't forget that a corporation is a creature of [illegible] was not chartered [illegible] so with an then it's in a bad way. So a corporation should always have a lawyer near at hand and should consult him *before* embarking on any new course

porate protection for corporations doing business away from home — must first have a lawyer.

[illegible] would know more about it, write for

The Corporation Trust Company

CT Corporation System



The above advertisement is reproduced from the June 1 issue of "Construction Methods." It is one of a series of trade magazine advertisements of The Corporation Trust Company, C T Corporation System, and associated companies.

An article in The Corporation Journal for June 1939 titled "Fulfilling Contracts with the Federal Government" cites cases every lawyer should study if he has a client engaged in, or about to assume, out-of-state Defense Contracts. Look up your copy of that number of The Journal or if you haven't it write for a reprint of the article. No charge or obligation.

THE CORPORATION TRUST COMPANY, C T CORPORATION SYSTEM and ASSOCIATED COMPANIES

ALBANY: 158 State Street . . . ATLANTA: 57 Forsyth Street, N.W. . . . BALTIMORE: 10 Light Street . . . BOSTON: 10 Post Office Square . . . BUFFALO: 295 Main Street . . . CHICAGO: 208 So. La Salle Street . . . CINCINNATI: 441 Vine Street . . . CLEVELAND: 925 Euclid Avenue . . . DALLAS: 1309 Main Street. DETROIT: 719 Griswold St. . . . DOVER, DELAWARE: 30 Dover Green . . . HARTFORD: 50 State St. . . . JERSEY CITY: 15 Exchange Place . . . KANSAS CITY: 926 Grand Ave. . . . LOS ANGELES: 510 S. Spring St. . . . MINNEAPOLIS: 409 Second Avenue S. . . . NEW YORK: 120 Broadway . . . PHILADELPHIA: 123 S. Broad Street . . . PITTSBURGH: 535 Smithfield Street . . . PORTLAND, MAINE: 57 Exchange Street . . . SAN FRANCISCO: 220 Montgomery Street. SEATTLE: 821 Second Avenue . . . ST. LOUIS: 314 North Broadway . . . WASHINGTON: 1329 E Street, N.W. . . . WILMINGTON: 100 West 10th Street

in defendant Pennsylvania corporation, licensed to do business in New York, sought relief against the corporation on a cause of action which the court, the United States District Court, Southern District of New York, found to be one which arose out of the state of New York. Service of process had been made upon a salesman, not in charge of the New York office, who solicited orders out of that office, subject to acceptance in Pennsylvania. The court ruled this service ineffective because not made upon one who was a "managing or general agent" under the federal court rules or upon a "managing agent" as prescribed under the New York Civil Practice Act. Process had also been served upon the secretary of state of New York. The company had designated an individual in 1915 as its agent to receive process in New York. This agent died but no subsequent designation of such an agent was filed by the defendant. Referring to Section 213, General Corporation Law, the court said: "A complicating feature is the fact that the pertinent statute was amended after the filing by defendant of its designation of Griffen in 1915. The law then in effect (Section 16 of the General Corporation Law, Laws of 1902, Chapter 28) limited service upon the secretary of state, in the event of the death or removal of the person designated by the foreign corporation, to 'an action upon any liability incurred within this State * * *.' No such limiting language appears in Section 213 of the General Corporation Law now in effect." The court noted that Section 213 "does not expressly make service on the secretary of state operative with respect to causes of action arising in foreign jurisdictions." Finding no statute or decision in New York to support such service in connection with a cause of action arising out of the state, the court also ruled the service on the secretary of state ineffective. *Cohen et al. v. American Window Glass Company*, United States District Court, Southern District of New York, September 30, 1941. Commerce Clearing House Court Decisions Requisition No. 266659. Meyer Kraushaar, for the plaintiffs. Van Vorst, Siegel & Smith, for the defendant.

British investment or holding corporation regularly carrying on its affairs in state, held subject to process in derivative stockholders' action. In a derivative stockholders' action, the corporation, a British investment or holding company, in the right of which the suit was brought, moved to set aside the service of summons on the ground it was not doing business in New York so as to be subject to suit. The New York Supreme Court, Special Term, New York County, denied the motion upon facts which showed the company did business in the state consistently and regularly through a resident managing director, by having organized and managed three subsidiaries, in which it made investments and to which it made advances. "The basis of my decision," said the court, "is that defendants' admitted activities of organizing such subsidiaries, and subscribing for their stock and making investments in and advances to them, unquestionably constitute the doing of business for which an investment corporation is organized." *Rubinstein et al. v. Bouard et al.*, 28 N. Y. S. 2d 264.

Abraham L. Pomerantz (Julius Levy, of counsel), of New York City, for plaintiffs. Goldwater & Flynn of New York City, for defendant Chosen Corporation, Limited, appearing specially.

Ohio.

New York corporation, dissolved in 1938 for failure to pay franchise taxes, held empowered to maintain suit in Ohio Court. A New York corporation sued a West Virginia corporation in an Ohio court on a cause of action arising in Ohio. The defendant alleged as a defense that the plaintiff company had been dissolved in 1938 by proclamation of the secretary of state of New York for failure to pay franchise taxes. The Ohio Court of Common Pleas, Belmont County, after an examination of pertinent New York statutes (Sec. 29, General Corporation Law, New York, and Sec. 203-a, Tax Law of New York, limited apparently, however, to Sec. 203-a as it stood prior to 1940 and 1941 amendments), and of New York decisions, felt "forced to the conclusion that no action can be maintained in the state of New York by a corporation after being dissolved under the tax act." Nevertheless, the court ruled that the action could be maintained in Ohio. It regarded the proclamation proceedings in New York as not to be considered "in any sense an absolute dissolution of the corporation but simply a conditional dissolution of the corporation until, if at all, the requirements of the law are met" with respect to reinstatement. The New York tax act was regarded as merely prohibiting the exercise of corporate functions under a penalty, which had no effect outside the state of New York except as to acts done within that state and said that "the question here is a question of procedure and the law of the forum controls." Noting that under Ohio decisions a corporation might maintain an action notwithstanding the corporate charter had been cancelled by the secretary of state of Ohio, the right of the plaintiff to maintain its action was upheld. *Fitzreylan Realty Co. v. Ohio Valley Advertising Corporation,* Ohio Court of Common Pleas, Belmont County, July 19, 1941. Commerce Clearing House Court Decisions Requisition No. 266512.

Texas.

Suit permitted in Texas court between two licensed foreign corporations on cause of action arising out of state. Plaintiff Arkansas corporation instituted suit in a Texas County District Court, on a cause of action in tort arising outside of Texas, against defendant Delaware company. Both corporations had obtained permits to do business in Texas. Plaintiff had its main Texas office in the county in which the District Court was located, and defendant had a number of agencies there. That court had rendered judgment for the defendant and dismissed the suit, holding it had no jurisdiction to try the case. Upon appeal, the Civil Court of Appeals of Texas, El Paso, reversed this judgment and remanded the cause for a trial on the merits, ruling that the trial court had no discretion to exercise on the

subject of jurisdiction and that it was under a necessity to try the case. The court made the following observations: "The rule which authorizes suits by and against foreign corporations doing business under permits undoubtedly primarily contemplates causes of action originating in and arising out of the business transacted in the State. Our statute does not so limit it." "The statute, Art. 1532, R. C. S. (Vernon's) 1925, expressly confers upon foreign corporations doing business under a permit all the rights and privileges of a domestic corporation. In the absence of any other provision this alone would be sufficient to bestow the right to bring, maintain and prosecute to final conclusion this suit. Art. 1320, § 2, Vernon's Civil Statutes, 1925, expressly confers the power, 'To maintain and defend judicial proceedings.' No argument is needed to establish the right of a domestic corporation to maintain a suit such as this against either another domestic corporation or one doing business under a permit. Any other rule would be intolerable." *H. Rouw Co. v. Railway Express Agency,* 154 S. W. 2d 143. Hardin & Hardin of Edinburg (Brown & Criss and Paul H. Brown, of Harlingen, of counsel), for appellant. Montgomery & Taylor, Smith & Hall, and Kelley & Looney, of Edinburg, for appellee.

Washington.

Sale of property, consigned to seller in care of purchaser, held not doing business. Through a salesman of plaintiff foreign corporation, defendant purchased a printing press, under a contract approved in Minnesota. A note for the purchase price was given and also a chattel mortgage on the press. The press had been consigned to the seller in care of the purchaser. Delivery was taken by a mechanic, who took it to the purchaser's place of business and put it in working order. There was no agreement to service the press, although incidental adjustments were made at times. Suit was for the balance due and to foreclose the chattel mortgage. The Washington Supreme Court affirmed judgment for the plaintiff foreign corporation overruling defendant's claim that the company was doing business in the state. *Brandtjen & Kluge, Inc. v. Nanson,** 115 P. 2d 731. Commerce Clearing House Court Decisions Requisition No. 264757. Gleeson & Gleeson of Spokane, for appellant. Harrison M. Berkey of Spokane, for respondent.

* The full text of this opinion is printed in **The Corporation Tax Service,** Washington, page 319.

Taxation

Alabama.

Alabama sales tax held valid when imposed on sales made to a Government contractor operating under a "cost-plus-a-fixed-fee" contract. "Respondents, King and Boozer, sold lumber on the order of 'cost-plus-a-fixed-fee' contractors for use by the latter in

constructing an army camp for the United States. The question for decision", said the Supreme Court of the United States, "is whether the Alabama sales tax, with which the seller is chargeable, but which he is required to collect from the buyer, infringes any constitutional immunity of the United States from state taxation." The court noted that the taxing statute, as the Alabama courts have held, makes the "purchaser" liable for the tax to the seller who is required "to add to the sales price" the amount of the tax and collect it when the sales price is collected, whether the sale is for cash or on credit. After an examination of the contract, the court continued: "We think, as the Supreme Court of Alabama held, that the legal effect of the transaction which we have detailed was to obligate the contractors to pay for the lumber. The lumber was sold and delivered on the order of the contractors which stipulated that the Government should not be bound to pay for it. It was in fact paid for by the contractors who were reimbursed by the Government pursuant to their contract with it. The contractors were thus purchasers of the lumber within the meaning of the taxing statute, and as such were subject to the tax. They were not relieved of the liability to pay the tax either because the contractors in a loose and general sense were acting for the Government in purchasing the lumber or, as the Alabama Supreme Court seems to have thought, because the economic burden of the tax imposed upon the purchaser would be shifted to the Government by reason of its contract to reimburse the contractors." The Supreme Court of Alabama, which had ruled that the imposition of the Alabama sales tax under such circumstances was a burden directly upon the Federal Government, was reversed. *State of Alabama v. King and Boozer,** Supreme Court of the United States, November 10, 1941. Commerce Clearing House Court Decisions Requisition No. 269088. Thomas S. Lawson, Attorney General, and John W. Lapsely and J. Edward Thornton, Asst. Attorneys General, and Gardner F. Goodwyn, Jr., for petitioner. Charles Fahy, Acting Solicitor General, and Fred L. Blackmon, for respondents.

* The full text of this opinion is printed in **The Corporation Tax Service,** Alabama, page 6701.

Nebraska.

Corporation, dissolved for nonpayment of occupation tax, ruled not liable for tax for any year subsequent to dissolution. "The question is presented to this court for the first time," observed the Supreme Court of Nebraska, "where a corporation had been dissolved by the secretary of state, in accordance with section 24-1722, Comp. St. 1929, and a notation made in his corporation records that such corporation is dissolved for nonpayment of occupation tax, can the state collect taxes for subsequent years?" The court reached the conclusion that the secretary of state is not empowered to levy occupation taxes against a corporation, which he has dissolved, for any year subse-

quent to the dissolution. In the course of its opinion, the court posed the question: "If the secretary of state has declared the corporation dissolved, how can the state assess any taxes after it has denied the corporation the right to do any business?" *Nebraska Central Building & Loan Association v. Yellowstone, Inc.,** 299 N. W. 474. Walter R. Johnson, Atty. General, and Robert A. Nelson, Asst. Atty. General, for appellant. Field, Ricketts & Ricketts of Lincoln, for appellees. *(Motion for rehearing granted, October 20, 1941.)*

* The full text of this opinion is printed in **The Corporation Tax Service**, Nebraska, page 1510.

Texas.

"Business done in Texas," as used in the numerator in the allocation factor for Texas franchise taxes, held to mean business begun and completed in Texas. The appellee corporation had received judgment in the lower court for the recovery of certain franchise taxes paid under protest for the years 1938, 1939 and 1940. These payments resulted from a demand by the Secretary of State that there be included in the numerator of the allocating fraction as "business done in Texas," interstate receipts derived from business originating in or consummated in Texas. The Texas Court of Civil Appeals, Austin, affirmed the judgment of the lower court allowing the recovery, quoting its own holding in a prior case involving 1933 to 1938 franchise taxes, (*Clark et al. v. Atlantic Pipe Line Co.*, 134 S. W. 2d 322, The Corporation Journal, December, 1940, page 281), that the language "business done in Texas," as used in the statute, Art. 7084, "was intended to mean business begun and completed in Texas, and not business begun in Texas and completed in some other state or foreign nation or vice versa." *Flowers et al. v. Pan American Refining Corp.,** Texas Court of Civil Appeals, Austin, October 1, 1941. Commerce Clearing House Court Decisions Requisition No. 267074. Gerald C. Mann, Attorney General, Glen R. Lewis and Cecil Cammack, Asst. Attys. General, of Austin, for appellants. Baker, Botts, Andrews & Wharton, of Houston, for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service**, Texas, page 1549.

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

ALABAMA. Docket No. 602. *State of Alabama v. King and Boozer,* 3 So. 2d 572. Application of Alabama sales tax to sales to contractors purchasing pursuant to "costs-plus-a-fixed-fee" contract with United States. **Appeal filed, September 11, 1941. Certiorari granted, October 13, 1941. Argued, October 23 and 24, 1941. Reversed, November 10, 1941.** (See page 64.)

ARKANSAS. Docket No. 190. *E. E. Morgan Co., Inc. v. State for Use and Benefit of Phillips County,* 150 S. W. 2d 736. (The Corporation Journal, October, 1941, page 10.) Liability of unlicensed foreign corporation to penalty for failure to obtain authority to do business where operating under contract with Federal government. **Appeal filed, June 19, 1941. October 13, 1941,** *Per curiam:* The motion to dismiss is granted and the appeal is dismissed for want of a substantial Federal question. **Rehearing denied, November 10, 1941.**

CALIFORNIA. Docket No. 283. *Butler Brothers v. McColgan, Franchise Tax Commissioner,* 111 P. 2d 334. (The Corporation Journal, November, 1941, page 38.) California Bank and Corporation Franchise Tax Act—allocation of income. **Appeal filed, July 19, 1941. Probable jurisdiction noted, October 13, 1941.**

MICHIGAN. Docket No. 617. *Brown v. J. B. Simpson, Inc.,* (*J. B. Simpson, Inc. v. Gundry et al.,* 298 N. W. 81, below). (The Corporation Journal, October, 1941, page 17.) Application of use tax to foreign corporation engaged in interstate commerce. **Appeal filed, September 15, 1941. Certiorari denied, October 27, 1941.**

PENNSYLVANIA. Docket No. 656. *Johnson v. Fuller et al.,* 121 F. 2d 618. (The Corporation Journal, October, 1941, page 9.) Reorganization of capital structure—accumulated dividends of preferred stockholders. **Appeal filed, September 26, 1941. Certiorari denied November 10, 1941.**

---

* Data compiled from CCH **U. S. Supreme Court Service,** 1941-1942.

Regulations and Rulings

ALABAMA—The Attorney General of Alabama has rendered an opinion that an amendment to the charter of a private corporation, consisting only of a change in name and an extension of corporate life, does not require the payment of the $2.50 fee for the filing of the certificate. (Alabama CT (Corporation Tax) Service, ¶ .0025.)

ARIZONA—The Attorney General of Arizona has ruled that an additional income tax assessment made after the expiration of three years from the close of the period covered by the report of income is void. (Arizona Corporation Tax (CT) Service, ¶ 1543.)

Where motor vehicle fuel is used partly for the Federal government and partly for the personal use of the user, it is not in the exclusive use of the government and is, therefore, taxable. (Opinion of Attorney General to Superintendent, Motor Vehicle Division, Arizona Highway Department, Arizona CT, ¶ 7984.)

INDIANA—The Attorney General has indicated that Chapter 154, Laws 1933, providing for the licensing and regulation of the business of making small loans, does not contemplate that a new license is to be issued every calendar year, although a new bond is required to be filed annually. (Indiana CT, ¶ 34-008.)

KENTUCKY—An oil Company solely engaged in extracting oil from the ground through a well and selling it to a private individual or company is exempt from the utility license tax, but is subject to the general corporation license tax. (Attorney General's opinion, Kentucky CT, ¶ 101.)

The Attorney General of Kentucky has ruled that a foreign corporation which purchases notes secured by mortgages upon Kentucky real estate from a duly licensed Kentucky corporation is not doing business in Kentucky so as to be required to be qualified as a foreign corporation. (Kentucky CT, ¶ .411.)

MICHIGAN—The State Tax Commission recently released 52 "Administrative Interpretations" in connection with the Intangibles Tax. (Full text in Michigan CT Service, ¶¶ 28-841 to 28-892.)

Royalties on oil produced in Michigan upon which the Severance tax is imposed, are not taxable under Act No. 301 of 1939, imposing a tax upon intangibles. (Opinion of Attorney General to Tax Commission, Michigan CT, ¶ 29-001.)

NEW YORK—The Department of Taxation and Finance has ruled that stock in a dissolved corporation may be sold and transferred without payment of the New York stock transfer tax imposed under Secs. 270 and 270a, Tax Law. (New York CT, ¶ 200-499.)

NORTH CAROLINA—The Commissioner of Revenue has been advised by the Attorney General that a corporation having no place of business in North Carolina, but soliciting orders there through salesmen, which sales are accepted or rejected at the home office in another state, from which office the goods are shipped, must register as a retailer and must collect and remit the use tax on such sales. (North Carolina CT, ¶ 78-090.)

SOUTH DAKOTA—Banking corporations are not exempt from the payment of the sales or use taxes. (Opinion of Attorney General to Directors of Taxation, South Dakota CT, ¶ 64-913.)

Some Important Matters for December and January

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ALABAMA—Annual Application Fee for permit to do business due on or before February 1.—Domestic and Foreign Corporations.

Report of Resident Stockholders and Bondholders due on or before February 1.—Domestic and Foreign Corporations.

ALASKA—Annual Corporation Tax Due on or before January 1.—Domestic and Foreign Corporations.

CALIFORNIA—Quarterly Retail Sales Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January.—Domestic Corporations.

DISTRICT OF COLUMBIA—Annual Report published and filed between January 1 and January 20.—Domestic Corporations.

GEORGIA—Annual License Tax Report due on or before January 1.—Domestic and Foreign Corporations.

ILLINOIS—Annual Report due between January 15 and February 28.—Domestic and Foreign Corporations.

INDIANA—Quarterly Gross Income Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

IOWA—Quarterly Retail Sales Tax Return and Payment due on or before January 20.—Domestic and Foreign Corporations.

KENTUCKY—Return of Withholding at the source due on or before January 31.—Domestic and Foreign Corporations.

LOUISIANA—Annual Report due on or before February 1.—Domestic Corporations.

OHIO—Report to Department of Industrial Relations due during January.—Domestic and Foreign Corporations.

Retail Sales Tax Reports due on or before January 31.—Domestic and Foreign Corporations.

PENNSYLVANIA—Report of Unclaimed Dividends, Credits, etc. due in January.—Domestic Corporations.

SOUTH CAROLINA—Annual Statement due on or before January 31.—Foreign Corporations.

UNITED STATES—Fourth Instalment of Income Tax due on or before December 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

VERMONT—List of Stockholders due on or before January 31.—Domestic and Foreign Corporations.

WEST VIRGINIA—Quarterly Gross Sales Tax Return and Payment due on or before January 30.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, N. Y.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation—all reflecting the amendments adopted in 1941.

Amendments to Delaware Corporation Law, 1941. Contains complete text of the amendments adopted at the 1941 session of the legislature, giving for each one a brief explanation of its purpose and effect.

Spot Stocks—and Interstate Commerce. Treats, in a general and informal way, of the relation between the carrying of goods in warehouses in outside states and the statutory obligations which that activity, in some states, places on the corporation owning the goods.

What Constitutes Doing Business. (Revised to March 15, 1939.) A 184-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them accessible also by either case name or topic. There is also a section containing citations to cases on the question of doing business such as to make the company subject to service of process in the state.

When a Corporation Leaves Home. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

We've Always Got Along This Way. This is a 24-page pamphlet giving brief digests of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves penalized in unusual and often embarrassing ways: such as one company that had to pay its employe-representative's alimony.

What! *We* Need a Transfer Agent? Nonsense! The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent—purpose being to enable any corporation official to judge more accurately whether or not his own company should use the services of a transfer agent.

Judgment by Default. Gives the gist of Michigan Supreme Court case of Rarden v. Baker and similar cases in other states, showing how corporations qualified as foreign in any states and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

A Corporation's Achilles Heel. Containing the complete text of the opinion of the Supreme Court of the United States in State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court, State of Washington, of the Supreme Court of New Mexico in Silva v. Crombie & Co., and of the Supreme Court of Michigan in Rarden v. R. D. Baker Co.—three decisions of great significance to attorneys of corporations qualified in one or more states.

ACT NOW . . .
BEFORE IT IS TOO LATE

THE NEW 1942 CCH ★ ★ ★ FEDERAL TAX GUIDE ★ ★ ★ SERVICE

LOOSE LEAF--ALWAYS UP TO DATE

Ready now, just when needed most, the new 1942 CCH FEDERAL TAX GUIDE SERVICE brings dependable guidance in handling today's federal tax problems.

Plain and understandable, this handy loose leaf manual gives a straight-forward explanation of the basic federal tax law, essential full texts, filled-in forms and other helps supplemented by current reports of important new developments throughout the year. Included, without additional charge, is the loose leaf CCH Internal Revenue Code Service, reproducing the Code in full, official text, kept up to date continually.

See it on approval. Use handy approval form below.

---*Mail This Coupon Today*---

Commerce Clearing House, Inc.
214 N. Michigan Ave., Chicago

CCH: Send for 15 days' examination on approval the one-volume loose leaf 1942 CCH Federal Tax Guide Service, together with the complimentary loose leaf CCH Internal Revenue Code Service. If we retain the Service after the trial period we are to receive continuing reports of new developments for both as follows:

☐ — for 1942 - - $30
☐ — for 1942 and 1943—$27.50 per year

Name .....
Attention .....
Address .....

80L/111960

THE CORPORATION TRUST COMPANY
120 BROADWAY, NEW YORK, N. Y.

For a corporation doing business in more than one state the Corporation Trust system of *3-function* protection is an immense relief for both lawyer and company officials.